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IN THE NAME OF GOD? The Problem of Religious or Non-religious Preambles to State Constitutions in Post-atheistic Contexts

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Following the collapse of the Berlin wall and the dissolution of the Soviet Union, the final decade of the 20th century witnessed a thorough restructuring of the political and social order in the countries of Central and Eastern Europe. The philosopher Francis Fukuyama spoke somewhat too quickly of the end of history, once it became clear that these countries had committed themselves to democracy, pluralism, and social market economy. The deep-seated rift between the basic political and social decisions in West and East, however, came to an end. Regarding constitutional law, this observation is indeed correct: the Central and Eastern European countries acquired new constitutions based on classic democratic principles and heavily influenced by western examples. These examples are highly disparate in regard to one specific question, namely the question of the *invocatio Dei* in their preambles.

In Antiquity and in the Middle Ages, it was completely normal to invoke God in the context of a contract. The presence of God (or the presence of gods) was absolutely necessary as the guarantor of the contractual agreements made. The modern era saw a basic two-fold division on this question: the first option is consistently laicistic and insists that the state must act neutrally on all issues of religion; this option was first taken by France¹. The second option follows classical tradition and continues to contain an invocation of God; an example of this option is found in the German *Grundgesetz*.²

In the recent discussion on the creation of a European constitution, it is thus not surprising that Germany and France are the primary opponents when it comes to deciding whether or not God should be included in its text. The French side is strongly against such an inclusion while the German side

¹"The French people hereby solemnly proclaim their dedication to the Rights of Man and the principle of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble to the 1946 Constitution. By virtue of these principles and that of the free determination of peoples, the Republic offers to the Overseas Territories expressly desiring this to adhere to them new institutions based on the common ideal of liberty, equality, and fraternity and conceived with a view to their democratic evolution." (The following constitutional texts are quoted from the collection posted at www.uni-wuerzburg.de/law, unless other sources are indicated).

²"In awareness of their responsibility in the face of God and all human beings, inspired by the will to serve peace in the world in a unified Europe, the people of Germany, based on their constitutional right, have given themselves this basic law."

argues with equal passion in its favour. The discussions of the EU committees to date seem to indicate that the inclusion of an invocation of God will not become an acceptable consensus. A compromise, however, might be found in the referral to the “spiritual-religious heritage” (the French draft speaks merely of a “patrimoine spirituel”) of Europe. Religion is thus relegated, if not to say banned, to the realm of cultural history - a quite common occurrence in the modern age.

With reference to the question of an *invocatio Dei* in state constitutions, the western world has devised a broad scope of answers, of which the German and French solutions are but a reduction. Initially I would like to present a few preambles from western states and discuss their theological profiles, after which I will analyse the new constitutions of Central and Eastern Europe.³ I will end by asking the question whether or not an *invocatio Dei* in constitutional preambles is still adequate for our times. This question will also be asked with specific consideration of the post-atheistic context of the Central and Eastern European countries.

I. References to God in Western Constitutions

When we examine various constitutional preambles, we recognize quickly that the *invocatio Dei*, where it occurs, generally takes the shape of a specific kind of reference to God, namely a reference to God the Almighty. A good example is the Swiss federal constitution (Document status: 2000):

“In the name of God Almighty! We, the Swiss People and Cantons, Whereas we are mindful of our responsibility towards creation; Resolving to renew our alliance to strengthen liberty and democracy, independence and peace in solidarity and openness towards the world; Determined to live our diversity in unity respecting one another; Conscious of our common achievements and our responsibility towards future generations; and Knowing that only those remain free who use their freedom, and that the strength of a people is measured by the welfare of the weakest of its members; Therefore we adopt the following Constitution:”

This use is especially widespread in the constitutions of the individual states of the USA. The constitution of the USA itself does not contain any religious reference,⁴ yet the individual state constitutions do. Here we most often find the phrase “Almighty God” (e.g. California, Florida, Georgia, Illinois, Kansas, Kentucky, New Mexico, Pennsylvania, Puerto Rico, Wisconsin), but also

³Europe is hereby defined geographically: In the east, it finds its boundaries at the Ural, so I have included the corresponding former Soviet Republics in this investigation as well.

⁴“We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” (Document status: 1994).

“Supreme Ruler of the Universe” (e.g. Colorado, Washington) “Supreme Being” (e.g. Iowa) or “Great Legislator of the Universe” (e.g. Massachusetts).

What religious language are these constitutional preambles using when they invoke “God the Almighty”? Are we dealing with a specifically Christian or even denominational (Protestant or Catholic) theological concept? It is easy to see that the phrase “God the Almighty” is not an exclusively Christian statement of faith. This predication, found in the Bible only on the fringes, lacks specific characteristics of Christian theology, such as love, redemption, or grace. The Egyptian constitution can also speak of “God the Almighty”⁵ and refer not to the Christian, but obviously to the Islamic God. But if the term “God the Almighty” is not a specifically Christian term, where then does it come from? The answer is: this term - in its functional use in preambles - is motivated by the Enlightenment and its way of thinking. We can illustrate this, for example, with Immanuel Kant's teachings on God. God, according to Kant, cannot be an object of *Pure Reason* (der “reinen Vernunft”), as he demonstrates conclusively in his deconstruction of proofs for the existence of God. Still, Kant reintroduces God as a postulate in his *Critique of Practical Reason* (“Kritik der praktischen Vernunft”) because the concepts of God, freedom, and immortality are necessary requirements for any claim to moral living. We find this idea with even greater clarity in the writings of Jean Jacques Rousseau, who develops a form of civil religion (“religion civile”), characterised as follows, in his *Contrat social* (1762):

“The dogmas of the *religion civile* must be simple, few in number, and expressed clearly, so that interpretation and explanation become unnecessary. The existence of an almighty, all-knowing, and benevolent deity, an all encompassing providence, a future life, the happiness of the just and the punishment of the evil, as well as the sanctity of the social contract and its laws - these are the positive dogmas. Concerning the negative ones, I will limit myself to but one: intolerance”.⁶

For the Enlightenment, God cannot be proven, but he must be postulated as an infallible agency of supervision in order to guarantee a functioning moral community. In this context, it is particularly advisable to refer back to God as the “Almighty”: God is the almighty guarantor of a moral order for state and society. This is the reason why a number of modern constitutions contain an *invocatio Dei* and why they tend to refer to “God the Almighty”. This rationale is expressed with even greater clarity by the terms “Supreme Ruler of the Universe”, “Supreme Being”, or “Great Legislator of the Universe”.

⁵“We, the people of Egypt, in the name of the Almighty and His assistance, declare on the 11th of September, 1971, that we accept, and grant to ourselves this constitution.”

⁶*Oeuvres completes* III, Paris 1964/1975, 468.

Strictly speaking, it was not Christian but Enlightenment motives that introduced God into constitutional preambles. There are very few examples where specifically Christian theological concepts were introduced into constitutional texts. The Irish and the Greek constitution can be mentioned here as examples. First to Ireland (Document status: 1995):

“In the name of the **Most Holy Trinity**, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, We, the people of Ireland, humbly acknowledging all our obligations **to our Divine Lord, Jesus Christ**, Who sustained our fathers through centuries of trial, Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation, And seeking to promote the common good, with due observance of Prudence, Justice and **Charity**, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, Do hereby adopt, enact, and give to ourselves this Constitution.”

The preamble to the Irish constitution contains not only a general *invocatio Dei* “in the name of God”, but defines its concept of God from the beginning as a Trinitarian concept and explicitly mentions Jesus Christ. Ireland thus invokes the Christian and no other God. It is also of interest that the preamble not only mentions traditionally modern values such as freedom and equality, but also - and this is most likely a direct consequence of the specific Christian quality of this preamble - charity.

Similarly, even if quite a bit shorter, the Greek preamble states (Document status: 1986):

“In the name of the **Holy and Consubstantial and Indivisible Trinity**, the Fifth Constitutional Assembly of Greece votes:”

Jesus Christ is not mentioned here; instead, elements of the early church's teaching on the Trinity are introduced into the text: the Trinity is “consubstantial” and “indivisible”.

Both Ireland and Greece are, however, exceptions, and can be explained by the traditionally strong position of the Catholic (93% in Ireland) and the Greek Orthodox church (98% in Greece) in the respective countries.⁷ An example for the opposite trend is the EU constitution mentioned above, in which a referral to God seems unlikely. There are two primary reasons for this fact: On the one hand, the Enlightenment postulate of God as the guarantor of political order is no longer part of our common culture. On the other hand, the German interest in such an invocation of God is born of specific experiences made in German history, experiences not shared by other nations.

The basic issue still remains: Does it make sense to refer to God in modern constitutions? We shall turn to the recent situation in Central and Eastern Europe to see how this problem has been dealt with in that context.

⁷Source: <http://www.populations.com> .

II. God in the New Constitutions of Central and Eastern Europe

A glance into the new constitutions of Central and Eastern Europe shows that these can be divided into four groups with reference to the question of an *invocatio Dei*: (1) constitutions that mention God in their preambles (Poland, Ukraine), (2) constitutions that make a connection to the tradition of the church (Czech Republic, Slovakia), and (3) constitutions that make do without even this reference. The last group (4) consists of those constitutions without any preamble, whose text begins directly with Article 1 (Romania⁸, Latvia⁹, also Albania, Armenia and Azerbaijan). I will confine my paper to groups (1) to (3).

1. Constitutions that Mention God

There are only two countries from the former Warsaw pact that even mention God in their new constitutions: Poland and Ukraine. In the case of Poland, we can suspect that this special status is connected to the eminent power of the Catholic church in Poland (98% Roman Catholic, 75% practicing).¹⁰ The Polish preamble speaks explicitly of the “Christian heritage of the nation”.

Poland (Document status: 1997)

“Having regard for the existence and future of our Homeland, Which recovered, in 1989, the possibility of a sovereign and democratic determination of its fate, We, the Polish Nation - all citizens of the Republic, **Both those who believe in God as the source of truth, justice, good and beauty, As well as those not sharing such faith but respecting those universal values as arising from other sources**, Equal in rights and obligations towards the common good - Poland, Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture **rooted in the Christian heritage of the Nation** and in universal human values, Recalling the best traditions of the First and the Second Republic, Obligated to bequeath to future generations all that is valuable from our over one thousand years’ heritage, Bound in community with our compatriots dispersed throughout the world, Aware of the need for cooperation with all countries for the good of the Human Family, Mindful of the bitter experiences of the times when fundamental freedoms and human rights were violated in our Homeland, Desiring to guarantee the rights of the citizens for all time, and to ensure diligence and efficiency in the work of public bodies, **Recognizing our responsibility before God or our own consciences**, Hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of aiding in the strengthening the powers of citizens and their communities. We call upon all those who will apply this

⁸“Romania is a sovereign, independent, unitary, and indivisible Nation State. The form of government of the Romanian State is a Republic. Romania is a democratic and social State governed by the rule of law, in which human dignity, the citizens’ rights and freedoms, the free development of human personality, justice, and political pluralism represent supreme values and shall be guaranteed.” (Document status: 1991)

⁹“Latvia is an independent democratic republic.” (Document status: 1998)

¹⁰Source: <http://www.populations.com/country.asp?ID=135>

Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland.”

An interesting feature of this text is its offer of a choice. It refers to God for those who believe in him, but makes room for other sources of universal values as well. God **or** the conscience are mentioned as the authority to whom the citizens are accountable. God is no longer, like “God the Almighty”, the direct guarantor of the moral and political world order, but he is the counterpart of the individual to whom the individual is morally bound, and therefore God can also be replaced by conscience.

This preamble mirrors the situation of modern societies quite accurately: religion, and with it the decision as to what is relevant and binding for the individual, is a private matter and the outcome of a personal choice. This choice can be, but must not be, made for God. The stability of the moral and political order is not guaranteed solely by an “Almighty God” but is expected to be the result of the (religiously motivated or not) moral behaviour of the individual citizens and their observance of the “universal human values”.

The case of Ukraine is somewhat different: Ukraine (Document status: 1991)

“The Verkhovna Rada of Ukraine, on behalf of the Ukrainian people - citizens of Ukraine of all nationalities, expressing the sovereign will of the people, based on the centuries-old history of Ukrainian state-building and on the right to selfdetermination realised by the Ukrainian nation, all the Ukrainian people, providing for the guarantee of human rights and freedoms and of the worthy conditions of human life, caring for the strengthening of civil harmony on Ukrainian soil, striving to develop and strengthen a democratic, social, law-based state, **aware of our responsibility before God, our own conscience, past, present and future generations**, guided by the Act of Declaration of the Independence of Ukraine of 24 August 1991, approved by the national vote of 1 December 1991, adopts this Constitution - the Fundamental Law of Ukraine.”

The preamble to the Ukrainian constitution mentions “God” and “our own conscience” as well, though not as an alternative, but as a follow-up. Thus, it seems to reflect a still more intact religious society than the Polish one. But this assumption at first glance does not prove true: If we look at the statistics of religious affiliation in Ukraine,¹¹ then we can see that the Ukrainian population is a quite secular, indeed mostly secular one: Ukrainian Orthodox (Russian patriarchy) 19.5%; Ukrainian Orthodox (Kiev patriarchy) 9.7%; Ukrainian Orthodox (Uniate) 7.0%; Protestant 3.6%; other Orthodox 1.6%; Roman Catholic 1.2%; Jewish 0.9%; other (mostly nonreligious) 56.5%. What then can be the reason for the mentioning of God in the Ukrainian constitution? All other former Soviet Republics

¹¹1995, source: <http://www.tagnet.org/scoggins/ukraine.html>.

(which often show similar structures in the religious affiliations of their population) have renounced any mention of God in their legal documents.

Probably, it has to do with strong separatist movements in Ukraine away from Russia that have a long tradition and have led Ukraine as the first of the former Soviet Republics out of the USSR (Ukrainian declaration of sovereignty July 16, 1990; declaration of independence August 24, 1991, both before the official breakup of the USSR on September 5, 1991). As an independent nation, Ukraine obviously has tended to stress the dissimilarities to Russia and has therefore introduced a religious formula into the preamble to its constitution - Ukraine is not a socialist or atheistic state like the USSR. Therefore, the reference to God (probably mostly conceived as the Ukrainian Orthodox God) in the Ukrainian constitution can be seen more as an expression of a new national consciousness than as an expression of a strong religious affiliation. Another reason may be seen in the help in the early 1990's of Americans, stemming originally from Ukraine, who have a strong relationship to the Ukrainian Church in the USA and seem to have supported the religious founding of the new constitution.

2. Constitutions Making a Connection to the Church Tradition

The constitutions of the Czech Republic and Slovakia contain no mention or invocation of God, but refer back to the "spiritual wealth" (Czech Republic) or the "spiritual heritage of Cyril and Methodius" (Slovakia). Religion is woven into the constitution through the mode of reminiscence; however, it also defines the task of developing the "spiritual culture". In all likelihood, the future constitution of the European Union with its reference to the "spiritual-religious heritage" will have - in religious respects - a similar preamble.

Czech Republic (Document status: 1993):

"We, the citizens of the Czech Republic in Bohemia, Moravia, and Silesia, at the time of the renewal of an independent Czech state, being loyal to all good traditions of the ancient statehood of Czech Crown's Lands and the Czechoslovak State, resolved to build, protect and develop the Czech Republic in the spirit of the inviolable values of human dignity and freedom, as the home of equal and free citizens who are conscious of their duties towards others and their responsibility towards the whole, as a free and democratic state based on the respect for human rights and the principles of civic society, as part of the family of European and world democracies, resolved to jointly protect and develop the inherited natural and cultural, material and **spiritual** wealth, resolved to abide by all time-tried principles of a law-observing state, through our freely elected representatives, adopt this Constitution of the Czech Republic."

Slovakia (Document status: 1992):

"We, the Slovak nation, mindful of the political and cultural heritage of our forebears, and of the centuries of experience from the struggle for national existence

and our own statehood, in the sense of the **spiritual heritage of Cyril and Methodius** and the historical legacy of the Great Moravian Empire, proceeding from the natural right of nations to self-determination, together with members of national minorities and ethnic groups living on the territory of the Slovak Republic, in the interest of lasting peaceful cooperation with other democratic states, seeking the application of the democratic form of government and the guarantees of a free life and the development of **spiritual culture** and economic prosperity, that is, we, citizens of the Slovak Republic, adopt through our representatives the following:”

In these examples, religion is a national treasure, but not an authority. This is a mainstream notion of religion, not only in Central or Eastern but also in Western Europe. From a theological point of view, however, it seems to sell religion at less than fair value. It is, of course, not the duty of a state constitution to exhaust all capacities of religion, but on the other hand, one may ask whether there could be political advantages for a modern state, were it to refer to more basic elements of a religion than to its cultural importance. We will return to this question in section III.

3. Constitutions With No Reference to God or Spiritual Heritage

The great majority of countries formerly belonging to the Warsaw pact who obtained free-democratic constitutions in the 1990s contain no reference to God or to a “spiritual heritage” at all. This is the case with Belarus, Bosnia and Herzegovina, Bulgaria, Estonia, Hungary, Lithuania, Russia, Slovenia, Serbia and Montenegro (former Yugoslavia). Here we find expressions such as “our adherence to values common to all mankind” (Belarus), “respect for human dignity, liberty, and equality, dedicated to peace, justice, tolerance, and reconciliation” (Bosnia and Herzegovina), “loyalty to the universal human values of liberty, peace, humanism, equality, justice and tolerance” (Bulgaria), “the generally accepted principles in the modern world” (Croatia), “founded on liberty, justice and law” (Estonia), “striving for an open, just, and harmonious civil society and law-governed State” (Lithuania), “protection of human rights and freedoms” (Slovenia). Interestingly, the constitutions of the (geographically still partly European, but culturally Central Asian) Republics of Kazakhstan,¹²

¹²Kazakhstan (http://www.president.kz/articles/state/state_container.asp?inq=en&art=constitution):

“We, the people of Kazakhstan, united by a common historic fate, creating a state on the indigenous Kazakh land, considering ourselves a peace-loving and civil society, dedicated to the ideals of freedom, equality and concord, wishing to take a worthy place in the world community, realizing our high responsibility before the present and future generations, proceeding from our sovereign right, accept this Constitution.”

Kyrgyzstan,¹³ Tajikistan,¹⁴ Turkmenistan¹⁵ and Uzbekistan,¹⁶ although mainly rooted in a strong Muslim context,¹⁷ belong also to this type of preambles without reference to God.

The expressions in all these preambles are statements of universal human rights and of social and political systems governed by these rights. It is noticeable, however, that the linguistic style is very similar to that of religious confessions, right down to the use of the term “**faith in good and justice**”¹⁸

¹³Kyrgyzstan (http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Foreigners_and_citizens/Nationality/Documents/Bulletin_and_national_legislation/Kyrgyzstan%20Constitution%20of%20the%20Kvrgghvz%20Republic.asp):

“We, the People of Kyrgyzstan, in order to secure national revival of the Kyrgyz, the defence and development of interests of representatives of all nationalities who form together with the Kyrgyz the People of Kyrgyzstan, guided by the ancestors’ precepts to live in unity, peace and concord; to confirm our adherence to human rights and freedoms and idea of national statehood; full of determination to develop the economy, political and legal institutions, culture in order to ensure worthy standards of living for everybody; announcing our adherence to universal human principles, and moral values of national traditions; full of desire to establish ourselves among the peoples of the world as a free and democratic civil society; in our role as authorised representatives do enact the present Constitution.”

¹⁴See note 19.

¹⁵Turkmenistan (<http://www.ecostan.org/laws/turkm/turkmenistancon.html>): “We, the people of Turkmenistan, based on our inalienable right to self-determination, proceeding from our responsibility for the present and future of our homeland, expressing fidelity to the precepts of our ancestors to live in unity, peace, and accord, possessing the goal of protecting our national values and interests, and securing the sovereignty of the Turkmen people; guaranteeing the rights and freedoms of every citizen and striving to provide civic peace and national accord, in order to affirm the foundations of popular power and the rule of law, adopt this Constitution the Basic Law of Turkmenistan.”

¹⁶Uzbekistan (<http://www.osi.hu/fmp/laws/Zakons/Uzbekistan/ConstUzbekEngl.html>):

“The People of Uzbekistan, solemnly declaring our devotion to human rights and the principles of state sovereignty, understanding a high responsibility before present and future generations, relying on the historical experience of the development of the Uzbek state, affirming our fidelity to the ideals of democracy and social justice, recognizing the primacy of generally recognized norms of international law, endeavoring to ensure a worthy life to citizens of the republic, setting as a goal the formation of a humanitarian democratic state operating under the rule of law, and in order to ensure civic peace and national accord through our authorized representatives adopt this Constitution of the Republic of Uzbekistan.”

¹⁷75%-89% Muslims (exception: Kazakstan: 47% Muslims, 44% Russian Orthodox). Source: <http://www.countryreports.org>.

¹⁸“We, the multinational people of the Russian Federation, united by a common destiny on our land, asserting human rights and liberties, civil peace and accord, preserving the historic unity of the state, proceeding from the commonly recognized principles of equality and self-determination of the peoples, honoring the memory of our ancestors, who have passed on to us love of and respect for our homeland and **faith in good and justice**, reviving the sovereign statehood of Russia and asserting its immutable democratic foundations, striving to secure the well-being and prosperity of Russia and proceeding from a sense of responsibility for our homeland before the present and future generations, and being aware of ourselves as part of the world community, hereby approve the Constitution of the Russian Federation.” (Document status: December 1993)

in the Russian constitution. Most explicit in this regard is the preamble to the constitution of Tajikistan: "We, the people of Tajikistan, ... **recognizing the rights and freedoms of the individual as sacred**."¹⁹ To be sure, this kind of religious language is not a new feature of the constitutions of the 1990's in Central and Eastern Europe but has also its predecessors in the Western World. Just one explicit example: The constitution of the German province of Baden-Wuerttemberg (1953) formulates: "in feierlichem Bekenntnis (in solemn confession) zu den unverletzlichen and unverausserlichen Menschenrechten (to the inviolable and inalienable human rights)".²⁰

It seems that the commitment to universal human rights has attained quasi religious status in these preambles, that at first sight appear to be secular. No longer is accountability to the almighty God final criteria, but accountability to the dignity of the human being. This demonstrates, as with the particular western examples, that constitutions - as the supreme texts of law - cannot do without religious reminiscences, at least as structural elements: whereas they do not invoke God, they do celebrate a firm "faith" in universal human rights, in which they find their foundation *extra se*.

III. Is an *invocatio Dei* an Appropriate Element of Contemporary Constitutions?

If we follow the majority opinion, then the answer to this question must clearly be no. Most of the states in Central and Eastern Europe that obtained new constitutions in the 1990s are obviously of the opinion that an *invocatio Dei* is no longer appropriate for our times. Even one of the most Catholic countries in the world, Poland, presents the alternative - God or individual conscience - as the ultimate authority to which we are accountable.

From a theological point of view, is this development a cause for lament? Any judgement in this area must be made with great care. It cannot be the task of the church and of theology to fight with all means for the *explicit* mentioning of God in legal texts of the state. A modern state must remain neutral in religious questions and an *invocatio Dei* would have to take on an inter-confessional and inter-religious shape in any case, the exceptions of Ireland and Greece (due to the specific religious situation in the respective countries) being exempted. Also, anything specifically Christian cannot have its place in legal texts containing legal *rights* because legal *disclaimers* are of equal importance from a

¹⁹Full Text (<http://www.geocities.com/Paris/9305/constitution.index.html>): "We, the people of Tajikistan, as an inseparable part of the world community; seeing ourselves responsible and duty bound to past, present, and future generations; wishing to ensure the sovereignty, development, and perfection of our state; recognizing the rights and freedoms of the individual as sacred; affirming the equality of rights and friendship of all nationalities and peoples of Tajikistan; seeking to built a just society; adopt and declare as valid this constitution."

²⁰P. Haeberle, *Praeambeln im Text und Kontext von Verfassungen. Festschrift Johannes Broerman*, Berlin 1982, 211-249, 217.

Christian point of view. Such *disclaimers*, however, must *per definitionem* take place outside the realm of law. The importance of the issue should thus be relativized from the start.

Without question, however, church and theology are fundamentally interested in constitutional matters, especially those pertaining to the religious shaping of the preambles. It is important that the legislative power of the state be structured in such a manner that it speaks not of the dignity of the creature - which, by the way, includes animals and plants as well as human beings - without making an issue of creaturely limitations. In theological terms: one cannot make an issue of the dignity of the creature without speaking of the dignity of the creator. This entails that state legislation, even on the level of constitutional law, must proceed in a way that reveals its penultimate status and that knows of the limitation of human thought and action. Traditional *invocationes Dei* can stand *today* (even though this is not their primary *historical* intention) for the claim that human rights and human authority are not without limitations and conditions, but find their source, their limitation, and their goal in the authority of God. The human being cannot be the measure of all things.

How this concern should take shape is an issue up for discussion. An explicit mention of God is not a *conditio sine qua non*. Quite the contrary, such a mention carries its own dangers. Based on the example of the Polish constitution, one could tend towards the opinion that the expression of alternatives may be an elegant solution that does justice to the modern pluralistic situation without having to do without a reference to God. This argument cannot be fully discounted. Still, we must also recognise the problem that the statement “recognizing our responsibility before God or our own consciences” places God and our conscience on equal terms, thus either secularising God or deifying our conscience.

It could very well be the case that a preamble that avoids mentioning God is shaped by theological thought to a greater degree than a preamble in which such mentioning is explicit. It all depends on the manner in which this occurs.

Is this issue to be addressed differently for the specifically post-atheistic situation of Central and Eastern Europe? During the era of the socialist regime, atheism was an element of state doctrine. Religion as the “opium of the people” was to be made obsolete by the advances in technological progress. Socialism did not succeed in eradicating religion, but it did generate strong tendencies towards moving away from the church: an especially striking example is the situation in the Czech Republic. In 2002,²¹ only 3,257,000 of 10,244,000 residents confessed a connection to a religious community whereas the number of confessed atheists stood at almost 6 million. A similarly precarious situation exists in the region of the former German Democratic Republic (GDR), where only 23% of

²¹The following figures are taken from various sources of the WWW and are not officially authorized. However, they provide a rough idea of the proportions of religious affiliation. For an overview see <http://populations.com> or <http://www.countryreports.org>.

the population consider themselves a member of a Christian church (compared to 64% in the old West German states). In those states with predominantly Orthodox churches, the church has been able to maintain most of its former relevance (Bulgaria: 86% Bulgarian-Orthodox; Rumania: 87% Rumanian-Orthodox; Serbia: 65% Serbian-Orthodox). Catholicism has a traditionally strong position in Poland (90%) and in Croatia (76.5%). The majority of people in Hungary are also Catholic (67.5%).

Once a religious tradition has collapsed to such a degree as in the GDR or the Czech Republic, we certainly must ask whether such a context still allows a sensibility for perceiving human ideas and ideals in a religious context as something with only penultimate validity. Yet the very experience of totalitarian forms of government may be especially suited to emphasise that human rights and human authority can never and should never be allowed to lay claim to ultimate validity. Perhaps this experience could lay the foundation for introducing a certain basic attitude into constitutions that is “religious” at least in its structure - an attitude that knows the limitations of one’s own actions and entails an openness to the notion of God.

We should not expect anything beyond this from a constitutional preamble. The state cannot help the church, but the reverse should become clear; namely, that there are basic (implicit or explicit) religious convictions that even a secular state cannot or should not do without.

Annex: The preambles to the state constitutions of Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Hungary, Lithuania, Moldova, Slovenia, Serbia and Montenegro (former Yugoslavia)

Armenia (1999)

The Armenian People, recognizing as a basis the fundamental principles of Armenian statehood and the national aspirations engraved in the Declaration of Independence of Armenia, Having fulfilled the sacred message of its freedom-loving ancestors for the restoration of the sovereign state, Committed to the strengthening and prosperity of the fatherland. In order to ensure the freedom, general will being and civic harmony of future generations, Declaring their faithfulness to universal values, Hereby adopts the Constitution of the Republic of Armenia.

Belarus (1994)

We, the People of the Republic of Belarus, emanating from the responsibility for the present and future of Belarus; recognizing ourselves as a subject, with full rights, of the world community and confirming our adherence to values common to all mankind; founding ourselves on our inalienable right to self-determination; supported by the centuries-long history of development of Belorussian statehood; striving to assert the rights and freedoms of every citizen of the Republic of Belarus; desiring to maintain civic harmony, stable foundations of democracy, and a state based on the rule of law; hereby adopt this Constitution as the Basic Law of the Republic of Belarus.

Bosnia and Herzegovina

(Document status: December 1995)

Based on respect for human dignity, liberty, and equality, dedicated to peace, justice, tolerance, and reconciliation, Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society, Desiring to promote the general welfare and economic growth through the protection of private property and the promotion of a market economy, Guided by the Purposes and Principles of the Charter of the United Nations, Committed to the sovereignty,

territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law, Determined to ensure full respect for international humanitarian law, Inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other human rights instruments, Recalling the Basic Principles agreed in Geneva on 8 Sept. 1995, and in New York on 26 Sept. 1995, Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows:

Bulgaria

(Document status: July 1991)

We, the Members of the Seventh Grand National Assembly, guided by our desire to express the will of the people of Bulgaria, by pledging our loyalty to the universal human values of liberty, peace, humanism, equality, justice and tolerance; by elevating as the uppermost principle the rights, dignity and security of the individual; in awareness of our irrevocable duty to guard the national and state integrity of Bulgaria, hereby promulgate our resolve to create a democratic, law-governed and social state, by establishing this Constitution.

Croatia

(Document status: 1990)

The millennial national identity of the Croatian nation and the continuity of its statehood, confirmed by the course of its entire historical experience in various political forms and by the perpetuation and growth of state-building ideas based on the historical right to full sovereignty of the Croatian nation, manifested itself: in the formation of Croatian principalities in the 7th century; in the independent medieval state of Croatia founded in the 9th century; in the Kingdom of Croats established in the 10th century; in the preservation of the subjectivity of the Croatian state in the Croatian-Hungarian personal union; in the autonomous and sovereign decision of the Croatian Parliament of 1527 to elect a king from the Habsburg dynasty; in the autonomous and sovereign decision for the Croatian Parliament to sign the Pragmatic Sanction of 1712; in the conclusions of the Croatian Parliament of 1848 regarding the restoration of the integrity of the Triune Kingdom of Croatia under the power of the Vice-Roy (Ban) on the basis of the historical state and natural right of the Croatian nation; in the Croatian-Hungarian Compromise of 1868 regulating the relations between the Kingdom of Dalmatia, Croatia and Slavonia and the Kingdom of Hungary, on the basis of the legal traditions of both states and the Pragmatic Sanction of 1712; in the decision of the Croatian Parliament of 29 Oct. 1918, to dissolve state relations between Croatia and Austria-Hungary, and the simultaneous affiliation of independent Croatia, invoking its historical and natural right as a nation, with the State of Slovenes, Croats and Serbs, proclaimed in the former territory of the Habsburg Empire; in the fact that the Croatian Parliament never sanctioned the decision passed by the National Council of the State of Slovenes, Croats and Serbs to unite with Serbia and Montenegro in the Kingdom of Serbs, Croats and Slovenes (1 Dec. 1918), subsequently proclaimed the Kingdom of Yugoslavia (3 Oct. 1929); in the establishment of the Banovina of Croatia in 1939 by which Croatian state identity was restored in the Kingdom of Yugoslavia; in laying the foundations of state sovereignty during World War Two, through decisions of the Anti-Fascist Council of the National Liberation of Croatia (1943), to oppose the proclamation of the Independent State of Croatia (1941), and subsequently in the Constitution of the People's Republic of Croatia (1947), and several subsequent constitutions of the Socialist Republic of Croatia (1963-1990). At the historic turning-point marked by the rejection of the communist system and changes in the international order in Europe, the Croatian nation reaffirmed, in the first democratic elections (1990), by its freely expressed will, its millennial statehood and its resolution to establish the Republic of Croatia as a sovereign state. Proceeding from the above presented historical facts and from the generally accepted principles in the modern world and the inalienable, indivisible, non-transferrable and inalienable right of the Croatian nation to self-determination and state sovereignty, including the inviolable right to secession and association, as the basic preconditions for peace and stability of the international order, the Republic of Croatia is hereby established as the national state of the Croatian

people and a state of members of other nations and minorities who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews and others, who are guaranteed equality with citizens of Croatian nationality and the realization of ethnic rights in accordance with the democratic norms of the United Nations and countries of free world. Respecting the will of the Croatian nation and all citizens, resolutely expressed at free elections, the Republic of Croatia is organized and shall develop as a sovereign and democratic state in which the equality of citizens and human freedoms and rights are guaranteed and ensured, and their economic and cultural progress and social welfare are promoted.

Estonia (1992)

Unwavering in their faith and with an unswerving will to safeguard and develop a state which is established on the inextinguishable right of the Estonian people to national self-determination and which was proclaimed on February 24, 1918, which is founded on liberty, justice and law, which shall serve to protect internal and external peace and provide security for the social progress and general benefit of present and future generations, which shall guarantee the preservation of the Estonian nation and its culture throughout the ages, the Estonian people adopted, on the basis of Article 1 of the Constitution which entered into force in 1938, by Referendum held on June 28, 1992 the following Constitution:

Georgia

(http://www.parliament.ge/LEGAL_ACTS/CONSTITUTION/Introduction.html)

The people of Georgia whose strong will is to establish a democratic social order, economic independence, a social and legal state, to guarantee universally recognised human rights and freedoms, to strengthen the state independence and peaceful relations with other countries, announce to the world this Constitution based upon many centuries of state tradition and the main principles of the 1921 Constitution

Hungary

(Document status: 1997)

In order to facilitate a peaceful political transition to a constitutional state, establish a multi-party system, parliamentary democracy and a social market economy, the Parliament of the Republic of Hungary hereby establishes the following text as the Constitution of the Republic of Hungary, until the country's new Constitution is adopted.

Lithuania (1992)

The Lithuanian Nation - having established the State of Lithuania many centuries ago, - having based its legal foundations on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania, - having for centuries defended its freedom and independence, - having preserved its spirit, native language, writing, and customs, - embodying the inborn right of each person and the People to live and create freely in the land of their fathers and forefathers, the independent State of Lithuania, - fostering national concord in the land of Lithuania, - striving for an open, just, and harmonious civil society and law-governed State, by the will of the citizens of the reborn State of Lithuania, approves and declares this Constitution.

Moldova

(http://www.riga.lv/mineires/NationalLegislation/Moldova/Moldova_Const_excerpts_Enqlish.htm)

(Document status 1994)

WE, the plenipotentiary representatives of the people of the Republic of Moldova, members of Parliament, STARTING from the age-old aspirations of our people to live in a sovereign country, and fulfilling those aspirations in proclaiming the independence of the Republic of Moldova, CONSIDERING that while growing into a nation the Moldovan people has given strong evidence of historical and ethnic continuity in its statehood, STRIVING to satisfy the interests of those of its citizens that, while being of a different ethnic origin, are, together with the Moldovans, forming the